

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY A. JOHNSON

Claimant

VS.

JOHNSON COUNTY

Self-Insured Respondent

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Docket No. 1,008,536

ORDER

Both claimant and respondent appealed the March 24, 2004 Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on September 21, 2004.

APPEARANCES

Michael H. Stang of Mission, Kansas, appeared for claimant. Eric T. Lanham of Kansas City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an August 5, 2002 accident and resulting injury to the left knee. In the March 24, 2004 Award, Judge Hursh awarded claimant both temporary total disability benefits and medical benefits. But the Judge denied claimant's request for permanent disability benefits.

Claimant contends Judge Hursh erred by failing to grant her permanent disability benefits. Claimant requests the Board to modify the March 24, 2004 Award and grant her benefits for a 15 percent permanent functional impairment to the left leg.

Conversely, respondent contends the Judge erred by finding claimant's accident arose out of her employment with respondent. In the alternative, respondent argues claimant failed to prove that she sustained any functional impairment due to the accident. Consequently, respondent requests the Board to reverse the Award and deny all benefits.

The only issues before the Board on this appeal are:

1. Did claimant's August 5, 2002 accident arise out of her employment with respondent?
2. If so, what is the nature and extent of her injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

On August 5, 2002, claimant was employed by respondent as a child care licensing specialist. On that date, claimant injured her left knee when she simultaneously turned in her chair and attempted to stand while reaching for a file that was overhead. Claimant immediately experienced severe pain in her left knee, which would not straighten. As a result of that incident, claimant underwent arthroscopic lateral meniscoplasty on her left knee.

Claimant's medical expert witness, Dr. P. Brent Koprivica, testified claimant probably tore the lateral meniscus in her left knee during the August 5, 2002 incident. On the other hand, respondent's medical expert witness, Dr. Jennifer Finley, testified claimant's lateral meniscus probably did not tear at that time but on some earlier occasion. In either event, whether the meniscus was torn before that incident or not, the Board finds it is more probably true than not that the meniscus tear displaced into the medial joint space as a result of the August 5, 2002 incident, causing claimant's left knee to lock.

The Board affirms the Judge's finding that claimant's August 5, 2002 accidental injury arose out of her employment with respondent.

K.S.A. 2002 Supp. 44-508(d) defines "accident":

"Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

K.S.A. 2002 Supp. 44-508(e) defines "personal injury" and "injury":

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under

the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

The foregoing statute, which defines "injury," excludes "normal activities of day-to-day living" from being found to have been caused by the employment.

The Board has concluded that the exclusion of normal activities of day-to-day living from the definition of injury was an intent by the Legislature to codify and strengthen the holdings in *Martin*¹ and *Boeckmann*.² But claimant's injury in this case is distinguishable from both *Martin* and *Boeckmann*. The Court in *Boeckmann* distinguished cases in which "the injury was shown to be sufficiently related to a particular strain or episode of physical exertion" to support a finding of compensability.³ The Board concludes that the Legislature did not intend for the "normal activities of day-to-day living" to be so broadly defined as to include injuries caused or aggravated by the strain or physical exertion of work.

The Board concludes claimant's accident arose out of her employment with respondent because there is a causal connection between the accident and the nature, conditions, obligations and incidents of the employment.⁴

The medical experts' functional impairment opinions were divergent. According to Dr. Finley, claimant has a zero percent functional impairment to her left leg under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.). Dr. Finley based her opinion on findings that claimant had no limb length discrepancy, gait derangement, unilateral muscle atrophy, asymmetrical muscle weakness, impairment of joint range of motion, or joint ankylosis. Likewise, the doctor determined that claimant's injury did not fit into the diagnosis-based estimates of the *Guides*.

Conversely, Dr. Koprivica found atrophy in claimant's left thigh and left calf and patellofemoral chondromalacia in the left knee. Moreover, the doctor found claimant had weakness with squatting involving the left knee. Considering the atrophy and weakness in claimant's left leg, Dr. Koprivica rated claimant as having a 15 percent left lower extremity impairment using the AMA *Guides*.

¹ *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

² *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

³ *Id.* at 737.

⁴ See *Martin*, 5 Kan. App. 2d 298.

The Board is not persuaded that either party's medical expert witness is more persuasive than the other and the Board finds claimant's actual impairment lies somewhere between the zero percent and the 15 percent ratings. Accordingly, the Board averages the zero and 15 percent ratings and concludes claimant sustained a 7.5 percent functional impairment to her left leg as a result of her August 5, 2002 accident at work.

AWARD

WHEREFORE, the Board modifies the March 24, 2004 Award and grants claimant benefits for a 7.5 percent loss of use of the left leg under the provisions of K.S.A. 44-510d.

Nancy A. Johnson is granted compensation from Johnson County for an August 5, 2002 accident and resulting disability. Ms. Johnson is entitled to receive 10.43 weeks of temporary total disability benefits at \$432 per week, or \$4,505.76, plus 14.22 weeks of permanent partial disability benefits at \$432 per week, or \$6,143.04, for a 7.5 percent permanent partial disability, making a total award of \$10,648.80, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director